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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,)
)
 VS.) NO. CR 05-0611 WHA
)
 DALE S. HEINEMAN AND KURT F.)
 JOHNSON,)
) SAN FRANCISCO, CALIFORNIA
 DEFENDANTS.) FRIDAY
) NOVEMBER 16, 2007
)

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF

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SAN FRANCISCO, CALIFORNIA
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FOR DEFENDANTS

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(FURTHER APPEARANCES ON FOLLOWING PAGE)

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**FOR DEFENDANT
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**ALSO PRESENT: BENJAMIN FLORES, U.S. PROBATION
VALERIE STEWART, BUREAU OF PRISONS**

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PROCEEDINGS; FRIDAY, NOVEMBER 16, 2007

THE CLERK: CALLING CRIMINAL CR 05-611, UNITED STATES VERSUS DALE HEINEMAN AND KURT JOHNSON.

COUNSEL, APPEARANCES --

MR. HALL: DAVID HALL AND BRIGID MARTIN FOR THE UNITED STATES.

DEFENDANT JOHNSON: KURT JOHNSON FOR THE DEFENDANT KURT JOHNSON.

DEFENDANT HEINEMAN: DALE HEINEMAN FOR THE DEFENDANT DALE HEINEMAN.

MR. TAMOR: RICHARD TAMOR APPEARING AS ADVISORY COUNSEL FOR MR. HEINEMAN AND MR. JOHNSON.

MR. FLORES: GOOD MORNING, YOUR HONOR. BENJAMIN FLORES FROM PROBATION.

THE COURT: MS. STEWART, WOULD YOU LIKE TO MAKE AN APPEARANCE?

MS. STEWART: GOOD MORNING, YOUR HONOR. VALERIE STEWART FOR THE FEDERAL BUREAU OF PRISONS, FDC DUBLIN.

THE COURT: ALL RIGHT. WE ARE HERE AS A FOLLOW-UP TO THE END OF THE TRIAL. BEFORE I GO INTO THAT, LET'S GET A LIST OF THINGS TO COVER TODAY.

MR. HALL, WHAT WOULD YOU LIKE TO COVER?

MR. HALL: YOUR HONOR, I WAS GOING TO INFORM THE COURT, FIRST OFF, THAT MY REVIEW OF RULE 29 AND RULE 33 SAYS

1 THE DEFENDANTS NEED TO FILE THOSE MOTIONS, IF THEY WANT TO,
2 WITHIN SEVEN DAYS OF VERDICT.

3 **THE COURT:** ALL RIGHT. SEVEN DAYS OF VERDICT. ALL
4 RIGHT.

5 NOW, WHAT ELSE WOULD YOU LIKE TO BRING UP?

6 **MR. HALL:** THE GOVERNMENT WOULD RENEW ITS REQUEST TO
7 HAVE THE DEFENDANTS PROHIBITED FROM USING COMPUTERS,
8 TYPEWRITERS, WORD PROCESSORS, AND THE LIKE WHILE INCARCERATED
9 PRETRIAL.

10 **THE COURT:** WHAT ELSE WOULD YOU LIKE TO BRING UP?

11 **MR. HALL:** I THINK THAT'S IT.

12 **THE COURT:** ALL RIGHT. THEN WE HAVE SOME OTHER
13 ITEMS TO BRING UP.

14 HOW ABOUT ON THE DEFENSE SIDE, ANY ITEMS TO BRING UP
15 FOR DISCUSSION TODAY?

16 **DEFENDANT JOHNSON:** NO.

17 **DEFENDANT HEINEMAN:** NO, SIR.

18 **THE COURT:** ALL RIGHT. MR. FLORES, HOW ABOUT YOU,
19 OUR PROBATION OFFICER?

20 **MR. FLORES:** YES, YOUR HONOR. THE PROBATION OFFICE
21 HAS DELIVERED THE REFERRAL PACKET TO THE DEFENDANTS AND
22 INDICATED THAT THOSE FORMS SHOULD BE FILLED OUT AND SUBMITTED
23 TO THE PROBATION OFFICE. I'VE HANDED THEM MY BUSINESS CARD.
24 THEY CAN DO IT DIRECTLY TO ME.

25 WHAT I DID NOT MENTION IS THAT UNDER THE LOCAL

1 RULES, ANYTHING THEY WISH TO HAVE CONSIDERED FOR SENTENCING
2 NEEDS TO BE SUBMITTED TO OUR OFFICE WITHIN SEVEN DAYS OF THE
3 VERDICT; HOWEVER, WE COULD BE WITHIN SEVEN DAYS OF TODAY. AND
4 ALSO BOTH HAVE INDICATED THAT THEY CHOOSE NOT TO BE INTERVIEWED
5 BY OUR OFFICE.

6 **THE COURT:** LET ME MAKE SURE THAT'S ON THE RECORD.

7 THE NORMAL PROCESS AT THIS POINT IS THAT THE
8 DEFENDANTS ARE INTERVIEWED BY PROBATION SO THAT THE INFORMATION
9 IN THE PRESENTENCE REPORT WHICH IS RELIED ON BY THE JUDGE FOR
10 SENTENCING IS ACCURATE AND THAT YOU HAVE YOUR INPUT INTO THAT.
11 NOW, YOU HAVE A RIGHT NOT TO BE INTERVIEWED, AND YOU HAVE A
12 RIGHT TO SAY YOU DON'T WANT TO PARTICIPATE, BUT MOST PEOPLE
13 CHOOSE TO PARTICIPATE BECAUSE THEY WANT THE REPORT TO BE
14 ACCURATE. AND THIS GOES INTO THINGS LIKE YOUR CHILDHOOD, YOUR
15 WORK HISTORY, YOUR FAMILY, AND ANY CONSIDERATIONS THAT A JUDGE
16 OUGHT TO TAKE INTO ACCOUNT FOR SENTENCING PURPOSES.

17 SO DO BOTH OF YOU UNDERSTAND WHAT I'M SAYING?

18 **DEFENDANT HEINEMAN:** YEAH.

19 **DEFENDANT JOHNSON:** YES.

20 **THE COURT:** NOW, DO YOU WANT TO BE INTERVIEWED BY
21 MR. FLORES?

22 **DEFENDANT JOHNSON:** I'M CERTAINLY -- I DON'T WANT TO
23 DO IT TODAY. IF I CHANGE MY MIND, I'LL CONTACT HIM
24 IMMEDIATELY.

25 **THE COURT:** WHAT IS THE DEADLINE ON THAT? IS THIS

1 ALSO A SEVEN-DAY THING?

2 **MR. FLORES:** NO, YOUR HONOR. THE SEVEN DAY IS FOR
3 DOCUMENTS TO BE SUBMITTED SO THAT OUR OFFICE COULD START TO
4 INVESTIGATE THE BACKGROUND INFORMATION. THE SEVEN DAYS ALSO
5 APPLIES TO THE GOVERNMENT IN SUBMITTING THE DISCOVERY SO THAT
6 THE PROBATION OFFICE CAN REVIEW THAT PRIOR TO THE INTERVIEW.

7 IF THEY CHOOSE TO BE INTERVIEWED, IT WOULD, AT THIS
8 POINT, HAVE TO TAKE PLACE EITHER THE WEEK OF NOVEMBER 26TH,
9 2007, OR SOMETIME AFTER THE NEW YEAR, AS I WILL NOT BE
10 AVAILABLE FROM DECEMBER 10TH THROUGH JANUARY 2ND. SO IF THEY
11 COMMUNICATE WITH ME -- EVEN WHEN I'M GONE, THEY CAN SEND ME A
12 LETTER OR VOICEMAIL, WE CAN DO IT THE FIRST WEEK OF JANUARY AT
13 DUBLIN.

14 **THE COURT:** WHAT IS IT YOU NEED FROM THE GOVERNMENT?

15 **MR. FLORES:** I NEED ALL THE DISCOVERY TO ESTABLISH
16 THE OFFENSE ITSELF, PARTICULARLY THE INTENDED LOSS AS IT
17 RELATES TO EACH OF THE FOUR DEFENDANTS THAT ARE STILL PENDING.
18 THAT WOULD INCLUDE MR. JULIAN AND MR. LECOMPTE. THE SOONER WE
19 GET THAT INFORMATION, THE SOONER I WOULD BE PREPARED TO EVEN
20 CONDUCT INTERVIEWS.

21 **THE COURT:** MR. HALL, WHEN ARE YOU GOING TO BE ABLE
22 TO TURN THAT OVER TO PROBATION?

23 **MR. HALL:** YOUR HONOR, THERE'S A TREMENDOUS AMOUNT
24 OF DISCOVERY, AND SOME OF THE THINGS THAT MR. FLORES JUST
25 TALKED ABOUT HAVE NOT BEEN SUMMARIZED, SO TO SPEAK. WE HAVE

1 SUMMARIES I CAN TURN OVER TO HIM. WE HAVE -- THE BULK OF THE
2 EVIDENCE THAT WAS USED IN THIS TRIAL ALL CAN BE GIVEN TO
3 MR. FLORES MONDAY.

4 SOME OF THE FURTHER COMPILATION OF AMOUNT OF LOSS
5 AND WHO LOST WHAT IS GOING TO HAVE TO BE SOMETHING THAT EITHER
6 HE OR, PROBABLY MORE LIKELY BETWEEN US, WE GO THROUGH EACH OF
7 THE TRANSACTIONS AND TRY TO DETERMINE OUR BEST ESTIMATE ALONG
8 WITH TESTIMONY IN TRIAL.

9 **THE COURT:** ALL RIGHT. CAN WE DO THIS IN TWO
10 STAGES? ON MONDAY YOU GIVE THE VAST MAJORITY OF THE
11 INFORMATION SO THAT HE CAN START READING THAT, AND THEN GIVE ME
12 A DEADLINE BY WHICH YOU WILL COMPLETE THE SECOND PART.

13 **MR. HALL:** DECEMBER 1ST.

14 **THE COURT:** FINE WITH ME. ALL RIGHT.

15 SO THEN, MR. FLORES, YOU'LL HAVE -- FOR AT LEAST
16 NINE DAYS, YOU'LL HAVE EVERYTHING FROM THE GOVERNMENT, RIGHT,
17 ON THAT SCHEDULE?

18 **MR. FLORES:** YES, YOUR HONOR.

19 THE ONLY OTHER ITEMS THAT WOULD BE FORTHCOMING,
20 HOPEFULLY, WOULD BE VICTIM IMPACT STATEMENTS FROM EACH OF THE
21 INTENDED VICTIMS. I HAVE RECEIVED A COUPLE RELATIVE TO THE
22 EARLIER CASES. I DON'T KNOW HOW MANY VICTIMS THERE ARE, HOW
23 MANY POTENTIAL VICTIMS THERE WERE.

24 **THE COURT:** I'LL LET YOU FIGURE THAT PART OUT WITH
25 THE GOVERNMENT. BELIEVE ME, PARTS ONE AND TWO IS GOING TO BE A

1 LARGE AMOUNT OF INFORMATION. THAT WILL KEEP YOU BUSY FOR A
2 LONG TIME.

3 **MR. FLORES:** OKAY. VERY WELL.

4 **THE COURT:** THEN YOU'LL GET THE VICTIM IMPACT
5 STATEMENTS, IF ANY, IN DUE COURSE. ALL RIGHT.

6 **MR. HALL:** YOUR HONOR, AS FAR AS THE DATE, WE'D ASK
7 TO GET ALL OF IT TO MR. FLORES -- DECEMBER 3RD IS OUR CUTOFF
8 DATE, BECAUSE MS. MARTIN TELLS ME DECEMBER 1ST IS A SATURDAY.

9 **THE COURT:** ALL RIGHT. DECEMBER 3RD.

10 OKAY. NOW I'M GOING TO COME BACK TO THE INTERVIEW
11 THING. I WANTED TO GIVE YOU UNTIL DECEMBER 3RD. IF YOU WANT
12 TO BE INTERVIEWED, THEN YOU SHOULD SEND IN WRITING SOME
13 NOTIFICATION TO MR. FLORES THAT YOU WANT TO BE INTERVIEWED.
14 AND I'M DIRECTING THIS TO BOTH DEFENDANTS.

15 IN ADDITION, HE'S GIVING YOU THAT PACKET, WHICH
16 YOU'RE NOT OBLIGATED TO FILL OUT. YOU STILL HAVE THE RIGHT TO
17 JUST THROW IT IN THE TRASH CAN IF YOU WANT, BUT MOST PEOPLE
18 FILL IT OUT BECAUSE THEY WANT THE INFORMATION TO BE ACCURATE
19 AND THEY WANT THE PRESENTENCE REPORT TO BE ACCURATE. SO THAT
20 YOU OUGHT TO FILL IT OUT PRONTO, LIKE BY, LET'S SAY, THE MONDAY
21 AFTER THANKSGIVING, AND RETURN IT TO MR. FLORES IF YOU ARE
22 GOING TO DO IT AT ALL. IS THAT A REASONABLE DEADLINE?

23 **MR. FLORES:** YES, YOUR HONOR.

24 AND, FOR THE RECORD, I DID EXPLAIN TO THE DEFENDANTS
25 THAT THE DRAFT REPORT WILL BE HAND DELIVERED BY MYSELF TO THEM

1 IF THEY ARE IN DUBLIN, OR WHEREVER THEY WOULD BE, AND THEN THEY
2 HAVE TEN COURT DAYS IN WHICH TO FILE A WRITTEN RESPONSE TO
3 ANYTHING IN THAT REPORT. SO IF THERE IS NO INTERVIEW, THERE IS
4 NO PACKET, THEY DO HAVE AN OPPORTUNITY TO REVIEW THAT REPORT
5 LONG BEFORE THE COURT RECEIVES IT. AT THAT TIME THEY CAN
6 SUBMIT ADDITIONAL INFORMATION IF THEY'VE DONE SO ALREADY, OR
7 NEW INFORMATION THEY WOULD WISH FOR THE PROBATION OFFICE TO
8 INCORPORATE INTO THE REPORT. THE FINAL REPORT THEN GOES OUT
9 TWO WEEKS BEFORE SENTENCING, AND, AGAIN, I WOULD HAND DELIVER
10 THOSE TO THE DEFENDANTS.

11 **THE COURT:** WE SET A DATE FOR SENTENCING EARLIER,
12 BUT IN TALKING TO MR. FLORES, ON ACCOUNT OF HIS BEING AWAY FOR
13 THREE WEEKS AND THE VOLUME OF MATERIAL, I'VE AGREED TO -- WHAT
14 WAS THE NEW DATE? MARCH 18TH?

15 **MR. FLORES:** MARCH 18TH.

16 **THE COURT:** ALL RIGHT. MARCH 18TH. ANYONE OBJECT
17 TO MARCH 18 AS THE SENTENCING DATE? THAT WOULD ALSO BE FOR
18 JULIAN AND LECOMPTE.

19 **DEFENDANT JOHNSON:** I'D RATHER DO IT FASTER.

20 **THE COURT:** I WOULD, TOO, MR. JOHNSON, BUT WE WANT
21 TO DO A PROFESSIONAL JOB. MR. FLORES HAS GOT TO DO A
22 PROFESSIONAL JOB, AND HE JUST CANNOT DO IT IN THAT LENGTH OF
23 TIME. THE SPEEDY TRIAL ACT DOESN'T APPLY ANY MORE BECAUSE THE
24 TRIAL IS OVER.

25 I AM SYMPATHETIC TO WANTING TO GET IT DONE. I'M SURE

1 YOU WANT TO PURSUE WHATEVER RELIEF YOU CAN GET OUT OF THE NINTH
2 CIRCUIT AND GET OUT OF MY COURT AND GO UP THERE.

3 **DEFENDANT JOHNSON:** WHAT GIVES YOU THAT IMPRESSION?

4 **THE COURT:** BUT, BELIEVE ME, WE WANT TO DO A CORRECT
5 AND PROFESSIONAL JOB ON EVERYTHING, SO MR. FLORES NEEDS THE
6 TIME, AND THAT'S THE SOONEST HE CAN DO IT.

7 **MR. FLORES:** WHAT TIME FOR THAT HEARING, YOUR HONOR?

8 **THE COURT:** I THINK WE SHOULD SPECIALLY SET THIS FOR
9 THE MORNING AT 8:00 A.M., DAWN. SO WE'LL HAVE ALL FOUR
10 DEFENDANTS SENTENCED AT THAT TIME.

11 **MR. HALL:** YOUR HONOR, THE GOVERNMENT WILL -- I'M
12 SURE THE DEFENSE LAWYERS FOR MR. JULIAN AND MR. LECOMPTE WILL
13 HAVE NO PROBLEM. THEIR DATES ARE CURRENTLY AT OTHER TIMES, AND
14 I'LL PREPARE STIPS FOR THAT DAY.

15 **THE COURT:** WE'VE GOT TO MOVE THEM. I WANT EVERYONE
16 TO BE SENTENCED IN LIGHT OF EACH OTHER, AND THEN -- SINCE IT'S
17 A SIMILAR PATTERN OF CONDUCT.

18 OKAY. ANYTHING MORE ON THE SUBJECT OF SENTENCING?

19 **MR. FLORES:** NOT FROM THE PROBATION OFFICE, YOUR
20 HONOR.

21 **MR. HALL:** NO, YOUR HONOR. THE ONLY -- I'M SURE THE
22 COURT IS MINDFUL OF THIS, BUT THE COURT WANTED TO GO BACK IN
23 WITH THE DEFENDANTS THEIR DESIRE TO HAVE LAWYERS FOR
24 SENTENCING.

25 **THE COURT:** ALL RIGHT. OKAY. I NEED TO --

1 MR. TAMOR, HAVE YOU HAD ANY DISCUSSIONS WITH THE DEFENDANTS
2 ABOUT THE SENTENCING PROCESS?

3 **MR. TAMOR:** BRIEFLY, YOUR HONOR, JUST THIS MORNING I
4 HAD A CHANCE TO SPEAK WITH THEM.

5 **THE COURT:** WELL, I WANT TO GIVE YOU TWO AS MUCH
6 OPPORTUNITY TO TALK WITH MR. TAMOR ABOUT THE SENTENCING PROCESS
7 AS POSSIBLE, BUT I WENT OVER THIS LAST TIME, I WANT TO GO OVER
8 IT AGAIN, BECAUSE THE SENTENCING IS A VERY IMPORTANT STEP. LET
9 ME JUST TELL YOU WHAT THE BASIC STEPS ARE SO YOU COULD SEE HOW
10 IMPORTANT IT IS TO HAVE A LAWYER.

11 THE FIRST STEP IS THE PRESENTENCE REPORT, WHICH WE
12 HAVE BEEN TALKING ABOUT WITH MR. FLORES, AND WHAT IS -- HOW
13 THICK IS THAT? HOW BIG A DOCUMENT IS THAT? THAT'S TYPICALLY
14 20 TO 30 PAGES, SINGLE SPACED, ON EACH OF YOU, AND IT WON'T BE
15 IDENTICAL. IT WILL BE -- SOME PARTS WILL BE IDENTICAL, BUT
16 THERE WILL BE -- EACH OF THESE REPORTS WILL BE TAILOR MADE TO
17 YOUR PERSONAL HISTORY, TO YOUR PERSONAL ROLE IN THE OFFENSES
18 FOR WHICH THE JURY FOUND YOU GUILTY, FOR WHAT'S ALSO CALLED
19 OTHER RELATED CONDUCT. FOR EXAMPLE, THE GOVERNMENT DID NOT
20 CHARGE FOUR HUNDRED COUNTS, BUT WE HEARD FROM MR. LECOMPTE THAT
21 HE DID FOUR HUNDRED OF THESE DEALS, SO HE TESTIFIED TO
22 THOUSANDS OF THESE DEALS.

23 SO ALL OF THAT CAN BE NOW CONSIDERED. IT'S NOT JUST
24 THE ONES FOR WHICH YOU WERE CONVICTED, IT'S ANYTHING THAT'S
25 CALLED -- "RELEVANT CONDUCT" IS THE PHRASE, RELEVANT CONDUCT.

1 SO IT'S A VERY FAR-REACHING, COMPREHENSIVE REPORT ABOUT
2 EVERYTHING INVOLVED IN THIS CASE, AND YOUR LIFE HISTORY, YOUR
3 CRIMINAL HISTORY, YOUR FAMILY RESPONSIBILITIES.

4 SO PROBABLY IN THIS CASE IT WOULD BE ROUGHLY 25 TO
5 30 PAGES SINGLE SPACED. IT COULD BE LONGER. THAT'S STEP ONE,
6 AND THAT'S -- MR. FLORES PREPARES THAT. HE DOES A LOT OF WORK.

7 THEN YOU GET A CHANCE TO COMMENT ON IT, OR, IF YOU
8 HAVE A LAWYER, YOU AND YOUR LAWYER GET A CHANCE TO COMMENT ON
9 IT AND GET HIM TO MAKE CHANGES TO CORRECT MISTAKES, AND OFTEN
10 THAT OCCURS. OFTEN THERE ARE MISTAKES, SOME SMALL, SOME BIG.
11 SOMETIMES THERE ARE WAYS TO CALCULATE WHAT'S CALLED THE
12 SENTENCING GUIDELINES, AND THAT -- ALL OF THAT TAKES PLACE
13 BEFORE IT EVER COMES TO ME.

14 THEN IT DOES COME TO ME, AND I READ IT, AND WE HAVE
15 A WHOLE HEARING ON THE ACCURACY OF THE PRESENTENCE REPORT. AND
16 IF YOU HAVE NOT TIMELY PRESERVED OBJECTIONS TO THE PRESENTENCE
17 REPORT OR SOME SPECIFIC THING, THEN IT'S DEEMED WAIVED; YOU
18 CAN'T GO BACK TO IT.

19 THESE GUIDELINES LOOK LIKE THIS (INDICATING). THIS
20 IS THE ONE THEY JUST SENT ME THE OTHER DAY FROM THE SENTENCING
21 COMMISSION. LOOK AT THIS. IT'S BIGGER THAN A PHONE BOOK, AND
22 IT'S FULL OF -- IT'S LIKE THE INTERNAL REVENUE CODE. THAT
23 WOULD BE A GOOD EXAMPLE. IT IS FULL OF TECHNICAL REQUIREMENTS,
24 AND I HAVE DIFFICULTY WORKING MY WAY THROUGH THE GUIDELINES,
25 AND I KNOW THAT THERE ARE EXPERT LAWYERS OUT THERE WHO

1 SPECIALIZE IN BEING EXPERT ON THESE GUIDELINES.

2 NOW, WE ALSO HAVE MR. FLORES. HE'S AN EXPERT ON
3 THEM. I DOUBT HE WOULD MAKE A MISTAKE, BUT HE MIGHT.
4 SOMETIMES THEY MAKE MISTAKES. IT COULD MAKE A DIFFERENCE AS
5 SMALL AS ONE OR TWO MONTHS TO TEN YEARS IN WHAT SENTENCE
6 SOMEBODY GETS IF A MISTAKE IS MADE.

7 NOW, IF YOU TWO ARE TRYING TO WORK YOUR WAY THROUGH
8 THESE GUIDELINES ON YOUR OWN, IT'S GOING TO BE TOUGH ON YOU.
9 IT WOULD BE TOUGH ON A LAWYER, BUT AT LEAST A LAWYER HAS
10 EXPERIENCE IN IT, AND IT WOULDN'T BE AS DIFFICULT FOR A LAWYER
11 TO WORK THEIR WAY THROUGH THOSE SENTENCING GUIDELINES.

12 THE GOVERNMENT IS VERY FAMILIAR WITH THE GUIDELINES.
13 THEY WILL HAVE STRONG ADVANTAGE OVER YOU IF THERE'S -- FOR
14 EXAMPLE, IF THERE WAS A GUIDELINE QUESTION THAT COULD GO EITHER
15 WAY AND THE GOVERNMENT -- THEY MIGHT FEEL THEY DIDN'T HAVE ANY
16 OBLIGATION TO POINT OUT THAT THERE'S AN ARGUMENT -- THEY ARE
17 NOT GOING TO MAKE THE ARGUMENTS IN YOUR FAVOR. THEY ARE NOT
18 GOING TO MISREPRESENT ANYTHING TO THE COURT. BUT SOMETIMES
19 THEY CAN MAKE -- THEY HAVE A VALID, GOOD FAITH ARGUMENT TO
20 MAKE. THEY MAKE THE ARGUMENT, BUT THEY'RE NOT GOING TO TURN
21 AROUND AND MAKE THE ARGUMENT FOR YOU.

22 I MAY NOT KNOW WHAT ARGUMENT COULD BE MADE FOR YOU.
23 A LAWYER, THOUGH, WOULD, IF THERE IS ONE. A LAWYER WOULD BE
24 ABLE TO FIGURE OUT WHETHER THERE'S A GOOD FAITH RESPONSE TO
25 SOME ISSUE THAT COMES UP UNDER THE GUIDELINES.

1 SO THE GUIDELINE CALCULATION, WHICH LEADS UP TO A
2 RECOMMENDED NUMBER OF MONTHS -- FOR EXAMPLE, IN THE BACK HERE,
3 IT'S REALLY YEARS AND MONTHS. YOU CAN GET ALL THE WAY UP TO
4 360 MONTHS. WHAT IS THAT? IS THAT 30 YEARS? THIRTY YEARS TO
5 LIFE. IT GOES ALL THE WAY FROM, AT THE LOW END, PROBATION ALL
6 THE WAY UP TO LIFE IN PRISON, AND YOU CAN SEE THIS CHART AT THE
7 END SHOWS YOU HOW MANY DIFFERENT PERMUTATIONS.

8 THERE ARE -- IT GOES 43 CATEGORIES FROM TOP TO
9 BOTTOM AND SIX ACROSS, THAT'S LIKE 250 DIFFERENT POSSIBILITIES
10 IN THERE. SO YOU WOULD BE WELL ADVISED TO GET A LAWYER AND LET
11 ME APPOINT A LAWYER FOR FREE FOR EACH OF YOU TO DEAL WITH THE
12 GUIDELINES.

13 ALL RIGHT. SO THAT'S ONE BIG ELEMENT ON THE
14 GUIDELINES, AND I AM REQUIRED TO CONSIDER AND START WITH WHAT
15 THE GUIDELINE CALCULATION IS. BUT THAT'S NOT THE END OF IT.

16 IN ADDITION, CONGRESS HAS PASSED 3553, 18 USC 3553,
17 AND IT SAYS IN ADDITION THE COURT HAS TO ADDRESS A NUMBER OF
18 FACTORS. THESE MAY REQUIRE THAT YOU GO ABOVE THE GUIDELINES OR
19 BELOW THE GUIDELINES. AND YOU NEED TO SET A SENTENCE THAT WILL
20 REFLECT THE SERIOUSNESS OF THE OFFENSE, TO PROMOTE RESPECT FOR
21 THE LAW, TO PROVIDE JUST PUNISHMENT FOR THE OFFENSE, TO AFFORD
22 ADEQUATE DETERRENCE TO CRIMINAL CONDUCT, TO PROTECT THE PUBLIC
23 FROM FURTHER CRIMES OF THE DEFENDANT, AND IT GOES ON. THERE'S
24 QUITE A NUMBER OF FACTORS HERE.

25 SO EVEN THOUGH, LET'S SAY, THAT THE -- JUST TO TAKE

1 A HYPOTHETICAL, LET'S SAY THE GUIDELINE RANGE CAME OUT WITH "X"
2 YEARS IN PRISON, THEN YOU WOULD THEN HAVE TO CONSIDER, THE
3 COURT WOULD CONSIDER, ALL OF US WOULD CONSIDER TOGETHER, ALL
4 RIGHT, DO THESE GUIDELINES INDICATE WE GO ABOVE THAT OR BELOW
5 THAT, AND I MEAN THE FACTORS, STATUTORY FACTORS.

6 SO, A LAWYER WOULD BE SKILLED IN MAKING THOSE
7 ARGUMENTS FOR YOU.

8 IN ADDITION, A LAWYER WOULD -- IF YOU HAD A LAWYER,
9 IT WOULD BE MUCH EASIER MECHANICALLY, IN ADDITION TO THE SKILL,
10 TO DEAL WITH THE PROBATION OFFICER ON ALL OF THE PAPERWORK THAT
11 LEADS -- I CALL IT PAPERWORK, BUT IT'S IMPORTANT PAPERWORK THAT
12 LEADS UP TO THE PRESENTENCE REPORT.

13 SO THAT'S -- THEN AT THE -- OF COURSE, AT THE TIME
14 OF THE ARGUMENT, THE LAWYER WOULD ARGUE FOR EACH OF YOU. EACH
15 OF YOU WOULD HAVE YOUR OWN LAWYER. THE LAWYER WOULD MAKE A
16 CASE FOR MR. JOHNSON AND MAKE -- THE OTHER LAWYER WOULD MAKE
17 THE CASE FOR MR. HEINEMAN, AND EACH OF YOU WOULD STILL HAVE
18 YOUR OWN OPPORTUNITY TO SAY WHATEVER YOU WANTED TO SAY. BUT
19 ONCE IT'S DONE, IT'S DONE. THEN IT GOES TO THE NINTH CIRCUIT.

20 ONCE IT GETS INTO THE -- ONCE YOU GET INTO THE
21 BUREAU OF PRISONS, THE COURT NO LONGER HAS JURISDICTION TO FIX
22 ANYTHING. YOU COULDN'T THEN SAY, OH, I DECIDED I WANTED A
23 LAWYER AFTER ALL. IT WOULD BE WAY TOO LATE AT THAT POINT. SO
24 NOW IS THE TIME THAT YOU OUGHT TO BE GETTING THE LAWYER.

25 NOW, I WANT TO ALSO MENTION THAT THERE ARE THE --

1 WHAT IF YOU WERE -- WHAT YOU OUGHT TO BE CONSIDERING NOW. I
2 SAY THIS MERELY BECAUSE THE RULES ALLOW IT. AND, IN ADDITION,
3 MOST LAWYERS WHEN THEY LOSE A CASE FILE A MOTION FOR A NEW
4 TRIAL UNDER RULE 33, AND THEY COME UP WITH AS MANY LEGITIMATE
5 ARGUMENTS THAT THEY CAN WHY THEY THINK THE VERDICT WAS UNFAIR
6 OR SOMETHING UNFAIR HAPPENED DURING THE TRIAL. SO THAT'S
7 CALLED A MOTION FOR A NEW TRIAL. AND THEN RELATED TO THAT IS A
8 MOTION FOR JUDGMENT OF ACQUITTAL ON THE THEORY THAT THE
9 GOVERNMENT'S EVIDENCE OR THE OVERALL TRIAL EVIDENCE DID NOT
10 WARRANT A GUILTY VERDICT.

11 SO NOW, THAT ALL HAPPENS BEFORE YOU EVEN GET TO THE
12 FINAL SENTENCING STAGE. THAT HAPPENS MUCH SOONER. SO HERE ARE
13 THE THINGS THAT COULD BE ON YOUR PLATE FOR THE NEXT FEW WEEKS:
14 MOTION FOR NEW TRIAL, MOTION FOR ACQUITTAL, AND SENTENCING.
15 AND YOU -- EVEN THOUGH YOU HAVE WAIVED YOUR LAWYER FOR TRIAL
16 PURPOSES, I WANT TO GIVE YOU A NEW OPPORTUNITY GOING FORWARD TO
17 HAVE A LAWYER FOR ANY AND ALL OF THOSE THINGS, BUT -- AND THE
18 LAWYER WOULD THEN REPRESENT YOU IN COURT. YOU WOULD BE HERE AT
19 EVERY HEARING, BUT THE LAWYER WOULD BE THE ONE MAKING THE
20 ARGUMENTS, AND IT WOULD BE AT NO COST TO YOU. NO COST TO YOU.
21 EACH OF YOU WOULD HAVE YOUR OWN FREE LAWYER.

22 SO DO EACH OF YOU UNDERSTAND WHAT I'VE DESCRIBED?

23 **DEFENDANT HEINEMAN:** YES, SIR.

24 **DEFENDANT JOHNSON:** YES, SIR.

25 **MR. FLORES:** EXCUSE ME, YOUR HONOR. DOES THE COURT

1 WISH TO EXPLAIN THE DIFFERENCE IN THE STANDARD OF PROOF BETWEEN
2 THE PROSECUTION AND SENTENCING PHASES, WHICH IS VERY IMPORTANT?

3 **THE COURT:** THAT'S A VERY GOOD POINT.

4 AT THE SENTENCING STAGE, THE STANDARD OF PROOF IS,
5 FOR THE MOST PART, PREPONDERANCE OF THE EVIDENCE, MEANING 51
6 PERCENT. IT'S NO LONGER BEYOND A REASONABLE DOUBT. SO IF
7 THE -- LET'S SAY THAT THE 1,200 OTHER OR 3,500 OTHER INSTANCES
8 OF THESE TRANSACTIONS, THAT YOU WERE TO COME BACK AND SAY THAT
9 WAS NEVER PROVEN BEYOND A REASONABLE DOUBT, THE ANSWER WOULD BE
10 IT DOESN'T HAVE TO BE AT THIS STAGE; IT'S JUST PREPONDERANCE OF
11 THE EVIDENCE.

12 SO THERE'S NO JURY ANYMORE. IT'S JUST YOU TWO, THE
13 GOVERNMENT, MR. FLORES, AND ME, AND IF YOU GET A LAWYER, AND WE
14 ALL PUT OUR HEADS TOGETHER AND TRY TO DO THE RIGHT THING UNDER
15 THE LAW, I HAVE TO SENTENCE IN ACCORDANCE WITH WHAT IS THE
16 RIGHT THING UNDER THE LAW, BUT I AM TELLING YOU I FIND IT VERY
17 USEFUL TO GET THE INPUT OF THE LAWYERS, AND I WOULD FIND IT --
18 I WOULD SERIOUSLY CONSIDER ANYTHING, OF COURSE, THAT YOU PUT IN
19 ALL OF YOUR ARGUMENTS. I'M GOING TO GIVE GOOD FAITH
20 CONSIDERATION TO YOU, BUT I PROMISE YOU THAT YOU WOULD BENEFIT
21 FROM HAVING A LAWYER, IN MY JUDGMENT, TO MAKE ARGUMENTS FOR YOU
22 AND TO ASSIST YOU IN THIS PHASE OF THE CASE, AND I WANT TO URGE
23 UPON YOU THE DESIRABILITY OF OBTAINING A LAWYER.

24 I WANT TO SAY, ALSO, THAT THE -- WELL, LET ME
25 JUST -- LET ME JUST LEAVE IT AT THAT.

1 DO YOU UNDERSTAND WHAT I'M SAYING, MR. JOHNSON?

2 DEFENDANT JOHNSON: YES.

3 THE COURT: HOW ABOUT YOU, MR. HEINEMAN?

4 DEFENDANT HEINEMAN: YES, SIR.

5 THE COURT: LET ME ASK YOU, DO YOU WANT ME TO

6 APPOINT A LAWYER AT NO COST TO YOU, MR. JOHNSON, GOING FORWARD?

7 DEFENDANT JOHNSON: NO, THANK YOU.

8 THE COURT: HOW ABOUT YOU, MR. HEINEMAN?

9 DEFENDANT HEINEMAN: NO, SIR.

10 THE COURT: DO YOU UNDERSTAND YOUR RIGHTS AT THIS

11 STAGE FOR ME TO APPOINT A LAWYER FOR YOU?

12 DEFENDANT JOHNSON: I DO.

13 DEFENDANT HEINEMAN: I UNDERSTAND.

14 THE COURT: AND YOU WANT TO GIVE THAT RIGHT UP

15 FREELY AND VOLUNTARILY?

16 DEFENDANT HEINEMAN: YES, SIR.

17 DEFENDANT JOHNSON: THAT'S CORRECT.

18 THE COURT: IS ANYONE PUTTING ANY PRESSURE ON YOU TO

19 GIVE UP A LAWYER?

20 DEFENDANT JOHNSON: NO.

21 DEFENDANT HEINEMAN: NO. LAWYERS ARE NICE GUYS; WE

22 JUST DON'T --

23 THE COURT: MAY I ASK YOU WHY YOU WANT TO REPRESENT

24 YOURSELF INSTEAD OF A LAWYER?

25 DEFENDANT JOHNSON: SURE, YOU CAN.

1 **THE COURT:** WHY IS THAT?

2 **DEFENDANT JOHNSON:** IT'S MY PERSONAL PREFERENCE NOT
3 TO DEAL WITH LAWYERS, WITH ONE EXCEPTION.

4 **THE COURT:** WELL, FOR THE RECORD, YOU ARE POINTING
5 AT MR. TAMOR.

6 **DEFENDANT HEINEMAN:** IN A LIMITED CAPACITY THEY'RE
7 USEFUL.

8 **THE COURT:** WHY DON'T YOU WANT A LAWYER,
9 MR. HEINEMAN, FULL TIME HELPING YOU OUT?

10 **DEFENDANT HEINEMAN:** SO FAR WE HAVEN'T BEEN BAFFLED
11 BY ANYTHING THAT'S BEEN PUT IN FRONT OF US.

12 **THE COURT:** HAVE YOU SEEN THESE SENTENCING
13 GUIDELINES?

14 **DEFENDANT HEINEMAN:** I'VE SEEN OLDER ONES.

15 **THE COURT:** HOW ABOUT YOU, MR. JOHNSON?

16 **DEFENDANT JOHNSON:** YES. ACTUALLY, I'D LIKE A SET
17 ON THE COMPUTER, TOO.

18 **THE COURT:** LET ME ASK YOU, MR. HALL, IS THERE
19 ANYTHING MORE I SHOULD ASK THE DEFENDANTS, OR DO YOU WANT ME TO
20 ADVISE THEM?

21 **MR. HALL:** YOUR HONOR, I THINK THIS IS PROBABLY
22 WHISTLING IN THE WIND ON BEHALF OF THE GOVERNMENT, BUT I THINK
23 MR. HEINEMAN IN PARTICULAR CONTINUES TO FOOL HIMSELF ABOUT HIS
24 ABILITIES. HE JUST SAID NOTHING HAS BAFFLED HIM. IN THE
25 GOVERNMENT'S OPINION, THE DEFENDANTS COULD NOT HAVE DONE A

1 WORSE JOB IN DEFENDING THEMSELVES. WE TALKED TO A COUPLE OF
2 MEMBERS OF THE JURY AFTER THE VERDICT, AND I JUST WANT TO
3 INFORM MR. HEINEMAN.

4 **THE COURT:** YOU SAID "WE," WHO DO YOU MEAN?

5 **MR. HALL:** MS. MARTIN AND I AND SEVERAL FBI AGENTS
6 WERE THERE, AND AMONG THE THINGS THAT -- THEIR COMMENTS ABOUT
7 THE TRIAL IS THEY HAD THE MOST TROUBLE, THE ONLY POINT OF
8 CONTENTION WAS WHO WOULD BE THE FOREMAN. THEY HAD NO REAL
9 PROBLEM OF CONVICTING THESE DEFENDANTS ON ANY COUNT.

10 AND IN REGARDS TO MR. HEINEMAN, ONE MEMBER OF THE
11 JURY SAID THAT SHE THOUGHT, ON BEHALF OF ALL MEMBERS OF THE
12 JURY, THEY WERE OFFENDED BY MR. HEINEMAN'S CLOSING ARGUMENT AND
13 HIS USE OF SARCASM. I JUST BELIEVE THAT THESE DEFENDANTS DO
14 NOT UNDERSTAND THE MORE THEY WORK AT DEFENDING THEMSELVES, THE
15 DEEPER THEY GET, AND IF COMMON SENSE, WHICH THEY TALKED ABOUT
16 IN THEIR CLOSING, WAS EVER TO ENTER THEIR HEAD, THEY WOULD
17 REALIZE THEY NEED A LAWYER, THEN AND NOW.

18 **DEFENDANT JOHNSON:** I THINK WE ARE ALREADY PAST
19 THAT.

20 **THE COURT:** LET ME ASK YOU AGAIN IN LIGHT OF WHAT
21 THE GOVERNMENT HAS SAID. WILL YOU ALLOW ME TO APPOINT A FREE
22 LAWYER FOR EACH OF YOU? AND I WILL TRY TO GET SOMEBODY WHO IS
23 ESPECIALLY SKILLED IN SENTENCING MATTERS AND POST TRIAL
24 MOTIONS, MR. JOHNSON?

25 **DEFENDANT JOHNSON:** NO, THANK YOU.

1 **THE COURT:** MR. HEINEMAN?

2 **DEFENDANT HEINEMAN:** NO, THANK YOU, SIR.

3 **THE COURT:** MR. TAMOR, I AM GOING TO ASK YOU TO
4 CONTINUE TO BE AVAILABLE TO ANSWER PROCEDURAL QUESTIONS,
5 INCLUDING MATTERS OF SENTENCING, IF THE DEFENDANTS ASK, BUT YOU
6 ARE NOT TO BE ACTING AS COUNSEL FOR EITHER OF THEM. YOU ARE
7 MERELY LIKE A LIBRARY RESOURCE IF THEY HAVE A QUESTION. IT'S
8 THE SAME KIND OF GROUND RULES AS BEFORE.

9 WILL YOU CONTINUE IN THAT ROLE?

10 **MR. TAMOR:** YES, YOUR HONOR, I WILL.

11 **THE COURT:** THANK YOU.

12 AND, MR. MOORE, I'M GOING TO ASK YOU, BECAUSE THIS
13 IS AN EQUALLY IMPORTANT PHASE OF THE CASE, TO CONTINUE IN YOUR
14 ROLE AS THE LEGAL ASSISTANT.

15 **MR. MOORE:** YES, YOUR HONOR.

16 **THE COURT:** ALL RIGHT. THANK YOU.

17 I WANT TO SAY IN RESPONSE TO THE GOVERNMENT'S
18 COMMENT, BECAUSE I DON'T KNOW HOW THE NINTH CIRCUIT MIGHT TAKE
19 WHAT MR. HALL JUST SAID, BUT THERE IS NO DOUBT IN MY MIND THAT
20 MR. JOHNSON AND MR. HEINEMAN KNOW EXACTLY WHAT THEY HAVE BEEN
21 DOING, AND I, THE COURT, IS CONVINCED THAT THEIR STRATEGY HAS
22 BEEN TO THROW AS MANY MONKEY WRENCHES AS POSSIBLE INTO THE
23 APPEARANCE OF THE TRIAL SO THAT TO THE COURT OF APPEALS IT MAY
24 APPEAR FROM A DISTANCE AS IF THESE TWO WERE DRESSED IN JAIL
25 GARB, THAT THEY DIDN'T HAVE A LAWYER. MR. JOHNSON STANDS UP IN

1 HIS OPENING STATEMENT AND SAYS, "PLEASE FIND US GUILTY."
2 PUTTING INTO EVIDENCE DOCUMENTS THAT HURT THEM RATHER THAN HELP
3 THEM AND THE MANNER IN WHICH THEY CONDUCTED THEIR CLOSING
4 ARGUMENTS, THEIR GENERAL CONTEMPT FOR THE ENTIRE PROCESS,
5 THERE'S NO DOUBT IN MY MIND THAT THEY HAVE DONE THAT
6 INTENTIONALLY, DELIBERATELY AND WITH THEIR EYES OPEN.

7 IT'S BEEN A DELIBERATE STRATEGY, AND I WOULDN'T WANT
8 THE COURT OF APPEALS TO THINK THAT FROM MR. HALL'S COMMENTS
9 THAT THE DEFENDANTS HAVE NOT UNDERSTOOD THE LIKELY CONSEQUENCES
10 OF THE STRATEGIES THAT THEY HAVE ADOPTED.

11 **MR. HALL:** YOUR HONOR --

12 **THE COURT:** I THINK THERE'S STILL TIME FOR THEM TO
13 SALVAGE SOMETHING FROM THIS BY GETTING A LAWYER, BUT -- AND TO
14 DO THEMSELVES A LOT OF GOOD BY GETTING LAWYERS, BUT THEY HAVE
15 TURNED THAT DOWN, EVEN THAT DOWN, AND -- ALL RIGHT. GO AHEAD,
16 MR. HALL.

17 **MR. HALL:** YOUR HONOR, I COULDN'T AGREE MORE. IN
18 FACT, I ARGUED AS MUCH THE SAME IN MANY OF MY COMMENTS TO THE
19 JURY.

20 WHAT I SIMPLY MEANT TO TALK ABOUT WAS THEIR
21 ABILITIES. IT SEEMED TO ME MR. HEINEMAN IN PARTICULAR SAID --
22 TALKS ABOUT HIS ABILITY TO NOT BE BAFFLED BY ANYTHING THE
23 GOVERNMENT OR THE COURT IS DOING, AND I THINK THAT, AT LEAST BY
24 HIS ACTIONS, HE SHOWS THAT HE DOES NOT HAVE THE ABILITY.

25 **THE COURT:** ALL RIGHT. YOUR POINT IS MADE. OKAY.

1 NOW, I WOULD LIKE TO GIVE YOU BOTH AN EXTENSION OF
2 TIME, IF YOU WANT TO HAVE AN EXTENSION OF TIME, TO FILE A
3 MOTION FOR A NEW TRIAL AND/OR A MOTION FOR ACQUITTAL. WOULD
4 EITHER OF YOU LIKE THAT EXTENSION OF TIME?

5 **DEFENDANT JOHNSON:** WELL, SINCE WE WERE LOCKED OUT
6 OF THE LAW LIBRARY FOR THE LAST COUPLE OF DAYS, I THINK AN
7 EXTENSION OF TIME WOULD BE WARRANTED.

8 **THE COURT:** OKAY. WE ARE GOING TO GIVE YOU BOTH
9 UNTIL -- SEVEN DAYS IS THE NORM. SO LET'S -- 14 DAYS FROM THE
10 VERDICT WOULD BE WHAT?

11 **MR. HALL:** TWENTY-EIGHTH, YOUR HONOR.

12 **THE COURT:** LET'S GIVE YOU UNTIL DECEMBER 3RD TO
13 FILE WHATEVER YOU ARE GOING TO FILE BY WAY OF A MOTION FOR NEW
14 TRIAL AND/OR MOTION FOR ACQUITTAL.

15 I'M GOING TO ASK THAT THE MARSHALS AND THE BOP MAKE
16 AVAILABLE TO YOU THE SAME FACILITIES THAT THEY'VE HAD. I KNOW
17 THAT THE GOVERNMENT DOESN'T LIKE THAT, BUT I FEEL THAT THEY --
18 SINCE THEY'RE REPRESENTING THEMSELVES, I'M GOING TO ASK YOU
19 TO -- DON'T ABUSE IT, BUT ALLOW YOU TO HAVE ACCESS TO THE
20 LIBRARY, TO THE COMPUTER AND SO FORTH.

21 CAN YOU ARRANGE FOR THAT, MS. STEWART?

22 **MS. STEWART:** YES, YOUR HONOR. MAY I MAKE ONE
23 COMMENT?

24 **THE COURT:** YOU CAN IN JUST A MINUTE, BUT I WANT
25 THEM TO HAVE AS FAIR AN OPPORTUNITY AS POSSIBLE TO USE THOSE

1 FACILITIES.

2 **DEFENDANT JOHNSON:** CAN WE HAVE THE GUIDELINES
3 INSTALLED ON A COMPUTER? I BELIEVE IT'S POSSIBLE.

4 **THE COURT:** MR. HALL, WOULD YOU -- LET ME ASK.
5 MR. FLORES, WHAT IS THE APPLICABLE GUIDELINE BOOKLET THAT'S
6 GOING TO APPLY IN THIS CASE?

7 **MR. FLORES:** THAT DEPENDS ON THE LATEST DATE OF THE
8 COUNTS OF CONVICTION.

9 **THE COURT:** YOU FIGURE OUT WHAT IT IS, AND THEN
10 DELIVER ONE COPY OF THE SENTENCING GUIDELINES MANUAL, WHATEVER
11 IS THE APPLICABLE ONE, TO THE PRISON SO THEY WILL HAVE THAT.
12 PLEASE DO THAT BY DECEMBER 3RD.

13 **MR. FLORES:** OKAY. AND JUST FOR THE RECORD, YOUR
14 HONOR --

15 **MR. HALL:** THAT WOULD PROBABLY BE 2005, YOUR HONOR.

16 **MR. FLORES:** WHICHEVER GUIDELINES MANUAL, ONE BOOK
17 FOR THE TWO DEFENDANTS, OR TWO BOOKS?

18 **THE COURT:** CAN YOU SHARE ONE BOOK?

19 **DEFENDANT JOHNSON:** AS LONG AS THEY KEEP US
20 TOGETHER, WE'RE GOOD WITH ONE BOOK.

21 **MR. FLORES:** I'LL DELIVER TWO BOOKS, WHICHEVER THE
22 APPLICABLE BOOK IS. THAT BOOK THE COURT HAS, THE BLUE BOOK, IS
23 EFFECTIVE NOVEMBER 1, 2007. I HAVE TO COMPARE THAT WITH THE
24 BOOKS -- THE BOOK OR BOOKS THAT WERE IN EFFECT AT THE TIME THE
25 COUNTS OF CONVICTION WERE COMMITTED, AND I HAVE TO COMPARE THE

1 TWO BEFORE I MAKE A DECISION.

2 **THE COURT:** IF IT TURNS OUT THERE ARE TWO BOOKS FOR
3 TWO DIFFERENT TIME PERIODS, THAT YOU GOT TO DELIVER, DELIVER
4 THEM BOTH. BUT YOUR JOB IS NOT TO EDUCATE -- YOU KNOW, TO BE
5 THEIR LAWYER, BUT I'M ONLY ASKING YOU TO GIVE THEM WHATEVER
6 BOOKS ARE GOING TO BE RELEVANT TO OUR DETERMINATION. AND IF IT
7 TURNS OUT THERE ARE TWO DIFFERENT COLORED BOOKS, THAT'S FINE;
8 GIVE THEM TWO SETS OF TWO DIFFERENT COLORED ONES. IF IT'S ONE
9 BOOK, THAT'S FINE, TOO.

10 **DEFENDANT HEINEMAN:** WE NEED TO KNOW WHICH ONE IS
11 RELEVANT.

12 **THE COURT:** HE'S NOT GOING TO TELL YOU THAT. THAT'S
13 WHAT YOU HAVE TO FIGURE OUT. I'M NOT GOING TO HAVE HIM BEING
14 YOUR LAWYER. I TELL YOU, I COULDN'T POSSIBLY FIGURE IT OUT
15 WITHOUT A LOT OF STUDY. I'M NOT GOING TO ASK MR. FLORES TO
16 FIGURE IT OUT ON THE SPOT. THAT'S ANOTHER REASON WHY YOU NEED
17 A LAWYER. A LAWYER COULD FIGURE IT OUT.

18 MR. FLORES, IF THERE ARE TWO BOOKS YOU NEED -- FOR
19 SOME COUNTS YOU NEED BOOK ONE, FOR SOME COUNTS YOU NEED BOOK
20 TWO -- JUST DELIVER THEM BOTH. I DON'T WANT YOU SENDING
21 LETTERS, GIVING LEGAL ADVICE.

22 **MR. FLORES:** SURE. THE PROBATION REPORT WILL
23 INDICATE WHICH BOOK IS APPLICABLE AND FOR WHAT REASONS.

24 **THE COURT:** I UNDERSTAND IT WILL AT THAT POINT. AT
25 THAT POINT IT WILL, AND THEN THEY WILL HAVE THE OPPORTUNITY TO

1 UNDERSTAND WHY YOU ARE MAKING THAT JUDGMENT, BUT I'M TALKING
2 ABOUT ON DECEMBER 3RD, YOU DON'T NEED TO BE GIVING LEGAL
3 ADVICE.

4 NOW, I WANT TO COME BACK TO THE ACCESS TO THE
5 COMPUTER OR WHATEVER IT IS THAT YOU HAVE DOWN THERE. IF YOU
6 TWO ABUSE THAT AGAIN, I'M GOING TO TAKE IT AWAY, AND YOU ARE
7 GOING TO DO EVERYTHING BY HAND. IF THERE IS ANY MORE UCC
8 FILINGS, UCC DOCUMENTS, 1099S, ORDERS FOR YOUR RELEASE,
9 FORGERIES, ANYTHING LIKE THAT THAT WE KNOW ABOUT -- AND, BY THE
10 WAY, THAT'S ALSO GOING TO BE PART OF THE PRESENTENCE REPORT, I
11 EXPECT -- THEN YOU ARE JUST GOING TO GO TO HANDWRITTEN
12 DOCUMENTS, BECAUSE YOU HAVE NO -- THIS IS PROVIDED TO YOU
13 STRICTLY AND ONLY TO HELP YOU IN YOUR SENTENCING AND THESE
14 POST-TRIAL MOTIONS. IT IS NOT IN ANY WAY FOR ANYTHING ELSE,
15 NOTHING.

16 **DEFENDANT JOHNSON:** WE WERE ONLY USING THOSE FOR
17 TRIAL PURPOSES.

18 **THE COURT:** NO. THOSE 1099S THAT YOU GENERATED --

19 **DEFENDANT JOHNSON:** THEY ARE RELEVANT TO THE CASE.

20 **THE COURT:** THEY ARE NOT RELEVANT TO THE CASE. THEY
21 ARE RELEVANT FOR SENTENCING TO HELP DEMONSTRATE THAT YOU MAY BE
22 A DANGER TO SOCIETY, BUT THEY ARE NOT RELEVANT. YOU SHOULD NOT
23 BE GENERATING ANYTHING MORE LIKE THAT.

24 **DEFENDANT JOHNSON:** VERY GOOD.

25 **THE COURT:** MS. STEWART, YOU WANTED TO BE HEARD?

1 **MS. STEWART:** YES, YOUR HONOR, JUST WITH REGARD TO
2 THE COMPUTER AND PRINTER. I UNDERSTAND THE COURT'S
3 INSTRUCTIONS.

4 SO I WOULD ADVISE THE DEFENDANTS, AS COMMITTED
5 INDIVIDUALS, YOUR RELATIONSHIP WITH THE BUREAU OF PRISONS IS
6 NOW DIFFERENT THAN IT WAS AS AN UNCOMMITTED INDIVIDUAL. THERE
7 ARE FORMS, YOUR HONOR, THAT WE USE IN THE BUREAU OF PRISONS FOR
8 PRISONERS TO COMMUNICATE ISSUES WITH STAFF REGARDING THEIR
9 CONFINEMENT.

10 THIS, GENTLEMAN -- I'M HOLDING UP A FORM THAT THEY
11 GENERATED ON THE PRINTERS AT THE DETENTION CENTER, YOUR HONOR,
12 WHICH AT THE TOP OF THE PAGE SAYS "COP OUT," THIS IS NOT A
13 BUREAU OF PRISONS FORM, GENTLEMEN.

14 IF YOU WANT TO COMMUNICATE WITH STAFF, YOU GET A
15 BUREAU OF PRISON FORM 148, WHICH IS KNOWN AS A SLANG TERM AS A
16 COP OUT, AND YOU USE THAT FORM.

17 ANY DOCUMENTS THAT SHOW UP AND ARE DELIVERED TO
18 STAFF TYPEWRITTEN THAT SAY "COP OUT" AT THE TOP, I WOULD
19 IMMEDIATELY ADVISE THE COURT AND THE GOVERNMENT THAT THAT IS A
20 USE THAT THE JUDGE JUST EXPLAINED TO YOU IS PROHIBITED, AND THE
21 PRINTERS WILL BE REMOVED FROM THE LAW LIBRARY IMMEDIATELY.

22 **DEFENDANT JOHNSON:** SOUNDS GOOD.

23 **DEFENDANT HEINEMAN:** NO PROBLEM.

24 **THE COURT:** ANYTHING MORE, MS. STEWART?

25 **MS. STEWART:** NO, YOUR HONOR. THANK YOU.

1 **THE COURT:** ANYTHING MORE THAT THE GOVERNMENT WANTS
2 TO BRING UP?

3 **MR. HALL:** NO, YOUR HONOR.

4 **THE COURT:** ALL RIGHT. THE DATE FOR FILING IS
5 DECEMBER 3RD AT NOON OF ANY MOTION FOR ACQUITTAL UNDER RULE 29,
6 ANY MOTION FOR NEW TRIAL UNDER RULE 33, DECEMBER 3RD AT NOON.

7 MR. MOORE, I'M GOING TO ASK FOR YOUR ASSISTANCE IN
8 MAKING SURE THAT -- BECAUSE IF IT COMES IN LATE, THERE WILL BE
9 A PROBLEM. SO I WANT YOU TO BE IN TOUCH WITH THE DEFENDANTS,
10 MAKE SURE THAT WHATEVER THEY WANT TO FILE THAT IS IN THAT
11 CATEGORY IS FILED.

12 **DEFENDANT JOHNSON:** WE'LL TRY TO COORDINATE WITH
13 MR. MOORE, TOO. WE HAD A LITTLE PROBLEM AT TRIAL WHERE THINGS
14 WERE GETTING LOST IN THE MAIL, BUT WE'LL TRY AND GO MORE DIRECT
15 TO MR. MOORE.

16 **THE COURT:** OKAY. WHAT MORE CAN I DO FOR YOU TODAY?

17 **MR. HALL:** NOTHING, I DON'T THINK, YOUR HONOR.
18 THANK YOU.

19 **THE COURT:** ALL RIGHT. THE NEXT TIME THAT I WILL
20 SEE YOU WILL BE AT SENTENCING, UNLESS A MOTION IS MADE FOR A
21 NEW TRIAL OR ACQUITTAL, IN WHICH CASE WE'LL HEAR THAT SOONER.
22 AND I GUESS WE MIGHT AS WELL GO AHEAD AND SET A DATE FOR THE --
23 ANY MOTION WOULD BE BY DECEMBER 3RD, ANY OPPOSITION WOULD BE BY
24 WHAT DATE? WHAT TIME DO YOU WANT FOR YOUR OPPOSITION? TWO
25 WEEKS LATER, WOULD THAT BE --

1 **MR. HALL:** TWO WEEKS WOULD BE FINE, MORE THAN
2 ENOUGH.

3 **THE COURT:** THAT WOULD BE THE 17TH. AND THEN WE
4 WILL SET, LET'S SAY, JANUARY 8 FOR HEARING, 2:00 P.M.

5 NOW, IF THEY'RE NOT FILED OR NOT TIMELY FILED, THEN
6 WE DON'T HAVE A HEARING UNTIL SENTENCING.

7 DO YOU HAVE DOWN THERE COPIES OF THE CRIMINAL RULES
8 OF PROCEDURE?

9 **DEFENDANT JOHNSON:** I BELIEVE WE DO.

10 **THE COURT:** ALL RIGHT. THEN YOU SHOULD LOOK AT
11 THOSE, RULE 29 AND RULE 33. THOSE ARE GOVERNED MOTIONS FOR
12 ACQUITTAL AND MOTIONS FOR NEW TRIAL.

13 **DEFENDANT JOHNSON:** WE'VE ALREADY SUBMITTED A 29
14 ONCE, SO --

15 **THE COURT:** I KNOW YOU DID, AND YOU ARE FREE TO
16 SUBMIT A NEW ONE. MAKE NEW ARGUMENTS. DO WHAT YOU THINK IS
17 RIGHT FOR YOUR DEFENSE.

18 I THINK WE'RE AT AN END. UNLESS I HEAR SOME FURTHER
19 BUSINESS, WE'LL BE IN RECESS.

20 **DEFENDANT HEINEMAN:** AM I TO UNDERSTAND THAT THE
21 OTHER CODEFENDANTS WILL BE THERE AT TRIAL OR AT THE SENTENCING?

22 **THE COURT:** THAT'S WHAT MY PLAN IS. I THINK -- YOU
23 DON'T HAVE TO DO IT THIS WAY, BUT I WOULD PREFER TO DECIDE ON A
24 SENTENCE FOR EACH PERSON WITH THE BENEFIT OF KNOWING WHAT
25 SENTENCE THE OTHER PEOPLE ARE GOING TO GET, AND THE ONLY

1 EXCEPTION IS MR. TOBIAS WHO'S ALREADY BEEN SENTENCED, BUT
2 MR. JULIAN AND LECOMPTE ARE STILL UNSENTENCED AT THIS POINT.
3 RIGHT?

4 **MR. HALL:** YES, YOUR HONOR.

5 **THE COURT:** SO WE WILL HAVE FOUR -- IT WILL BE A
6 REASONABLY LONG DAY. WE WILL START AT 8:00 O'CLOCK, AND IT
7 MIGHT TAKE ALL MORNING OR INTO THE AFTERNOON BEFORE WE SORT IT
8 ALL OUT. OKAY.

9 ALL RIGHT, THANK YOU.

10 **MR. FLORES:** THANK YOU, JUDGE.

11 **MR. HALL:** THANK YOU.

12 (PROCEEDINGS ADJOURNED.)
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CERTIFICATE OF REPORTER

I, JOAN MARIE COLUMBINI, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CR 05-611 WHA, UNITED STATES V. DALE HEINEMAN, KURT JOHNSON, ET AL., WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

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WEDNESDAY, OCTOBER 29, 2008